PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed March 16, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. **13-O-11694**
	)	
CHRISTIAN UCHECHUKWU ANYIAM,	)	**OPINION**
	)	
A Member of the State Bar, No. 217326.	)	
	)	

Christian Uchechukwu Anyiam appeals a hearing judge's decision recommending a 30-day actual suspension for failing to obey a court order to pay attorney fees and sanctions, and failing to report the sanctions to the State Bar. Anyiam stipulated to facts establishing his culpability, and does not challenge those facts on appeal. Rather, he contests the mitigating and aggravating factors, primarily asserting that the judge erred in finding his trial testimony lacked candor. Anyiam contends that a 30-day actual suspension is excessive, and requests a private reproval. The Office of the Chief Trial Counsel of the State Bar (OCTC) did not seek review.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12), and affirm the hearing judge's culpability findings. We also adopt the judge's lack of candor determination, but find fewer factors in aggravation. Applying the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct,[1] and considering that OCTC does not seek increased discipline, we affirm the hearing judge's recommendation.

I. FACTS AND CULPABILITY

Anyiam was admitted to the State Bar in 2001 and has no prior record of discipline.

Both charges in this proceeding relate to a Los Angeles Superior Court order directing Anyiam to pay $3,000 in attorney fees and $1,000 in sanctions to an opposing party, Henry

[1] All further references to standards are to this source.

Quattlebaum III, through his counsel, Manny Ibay. The court announced the order, including a 30-day payment deadline, during an October 14, 2010 hearing. Anyiam was present and later stipulated he had actual knowledge of the sanctions and fees when they were imposed. He denies, however, that he heard the court set the 30-day payment deadline.[2] Anyiam failed to timely comply with the order.

On November 15, 2010, January 17, 2011, and January 25, 2011, Ibay faxed demand letters to Anyiam seeking the $4,000. The first two letters referenced the November 13, 2010 payment deadline. Anyiam claimed he did not receive any of the letters.

On January 27, 2011, Ibay filed an Order to Show Cause and Affidavit for Contempt (OSC) for non-payment of the fees and sanctions. The OSC stated the payment deadline. Ibay's supporting declaration also noted the deadline and authenticated his three demand letters, which were attached as exhibits. Anyiam's response claimed he had not been served with the OSC and only learned of it through the court's website. Upon Anyiam's request, Ibay faxed him the OSC.

Due to the alleged defective service, Ibay filed a second OSC on February 23, 2011, with supporting documentation identical to that filed with the first OSC.[3] Anyiam filed a response objecting to service via fax and claiming that his failure to comply with the order "was not willful because he lacked the financial ability to comply." Further, Anyiam made the following hearsay objection: "Citee also objects to this OSC for Contempt on the grounds that the charging affidavits *along with supporting exhibits* are hearsay and thus inadmissible." (Italics added.)

[2] Following the hearing, the court issued a minute order reiterating that the $4,000 payment was due within 30 days, but OCTC did not prove the order was served on Anyiam.

[3] The record does not contain proofs of service for these and many of OCTC's other exhibits. However, the hearing judge found Ibay was a credible witness, and we accept Ibay's testimony as proof he served the documents. (Rules Proc. of State Bar, rule 5.155(A); *Connor v. State Bar* (1990) 50 Cal.3d 1047, 1055.)

These supporting exhibits included Ibay's three demand letters. Ibay filed a reply declaration in May 2011, again referencing the payment deadline.[4]

In February 2013, Anyiam finally reported the $1,000 judicial sanction after being informed by the State Bar of his obligation to report. On August 19, 2013, OCTC filed a notice of disciplinary charges (NDC) alleging that Anyiam: (1) failed to comply with the fees and sanctions order, in violation of Business and Professions Code section 6103;[5] and (2) failed to timely report the sanctions to the State Bar, in violation of section 6068, subdivision (o)(3).[6] On October 28, 2013, three years after the order was issued, Ibay and Anyiam reached a settlement agreement whereby Anyiam paid $2,500 to satisfy the $4,000 debt.

Before his disciplinary trial, Anyiam entered into an extensive stipulation with OCTC, wherein he admitted to facts establishing his culpability for both charges. Nonetheless, he argued at trial that he was not culpable of failing to obey the fees and sanctions order (Count 1) because he did not know about the 30-day deadline and was financially unable to pay. He also claimed he was not culpable of failing to report the sanctions to the State Bar (Count 2) because he was unaware of his reporting obligation. The hearing judge found Anyiam culpable on both counts. Anyiam does not challenge these findings on appeal, and we affirm them.[7]

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[4] Ibay took the OSC off calendar before the superior court could rule on it.

[5] Under this section, an attorney's "willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear . . . constitute[s] cause[] for disbarment or suspension." All further references to sections are to the Business and Professions Code.

[6] Under this section, "[i]t is the duty of an attorney . . . [¶] . . . [¶] (o) [t]o report to the [State Bar], in writing, within 30 days of the time the attorney has knowledge of . . . [¶] . . . [¶] (3) [t]he imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars ($1,000)."

[7] While Anyiam's appellate briefs raise arguments about the culpability findings, his counsel confirmed during oral argument that Anyiam is not challenging them on appeal.

Where an attorney is aware that sanctions have been ordered, payment is required within a "reasonable time." (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 867.) Anyiam stipulated that he had actual knowledge of the sanctions order on October 14, 2010, but did not pay any portion until October 28, 2013. His failure to pay $4,000 in fees and sanctions for more than three years establishes his culpability under section 6103. (See *id.* at p. 868 [failure to pay sanctions more than one year after order issued not reasonable and violated § 6103].) Similarly, Anyiam is culpable of failing to timely report the $1,000 judicial sanction because he knew about it when it was imposed, yet he waited more than two years to report it. (See *id.* at p. 867 [failure to report sanctions three months after respondent learned of order is violation of § 6068, subd. (o)(3)].)

II. AGGRAVATION AND MITIGATION[8]

The hearing judge found four factors in aggravation (lack of candor, multiple acts of wrongdoing, significant harm, and lack of insight) and four in mitigation (no prior discipline, pro bono service, cooperation with the State Bar, and good character). We agree with the mitigation findings but conclude there is not clear and convincing proof of multiple acts and significant harm in aggravation.

A. Aggravation

1. Significant Weight for Lack of Candor (Std. 1.5(h))

Anyiam's primary contention on appeal is that the hearing judge incorrectly found his trial testimony lacked candor. (Std. 1.5(h) [aggravating circumstances may include "lack of candor and cooperation to victims of the misconduct or the State Bar during disciplinary

[8] Standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Anyiam to meet the same burden to prove mitigation. Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

investigation or proceedings"].) Anyiam's insistence that he did not know about the November 13, 2010 deadline formed the basis for the hearing judge's lack of candor finding.

Anyiam repeatedly testified he was unaware of any deadline because he did not hear the court announce it, and he did not receive Ibay's demand letters. Anyiam further claimed that Ibay's supporting declaration reciting the payment deadline, and the three demand letter exhibits, were not attached to the OSCs he received. The hearing judge found: "All of this testimony by [Anyiam] lacked credibility and candor. This was made most obvious by the fact that [Anyiam] filed a written objection in May 2011 to the very exhibits that he now says that he never saw . . . . The evidence is clear that he was well-aware of the 30-day deadline." We give great weight to the hearing judge's lack of candor finding, which is supported by the record. (See *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282 ["Even though a witness's candor must ordinarily be shown by clear and convincing evidence, great weight is still given to the hearing judge's findings on candor"].)

Anyiam's claim that he did not know the order's due date is contradicted by Ibay's credible testimony that: (1) the superior court judge announced the 30-day deadline in open court; (2) Ibay faxed Anyiam three demand letters when payment became overdue; (3) Ibay asked for payment of the overdue sanctions and fees during multiple conversations with Anyiam; and (4) Ibay served Anyiam with the OSCs, supporting declaration, and exhibits reciting the 30-day deadline. In addition, the portion of the OSC that Anyiam admits he received clearly states the November 13, 2010 payment deadline.[9] Further, he could not reasonably explain why he

[9] The Affidavit of Facts Constituting Contempt in the OSC stated:

Due Date	Type of Order and Date Filed	Payable To	Amount Ordered	Amount Paid	Amount Due
11/13/2010	Attorney's fees	Manny Ibay	$3,000	$0	$3,000
11/13/2010	Sanctions	[client]	$1,000	$0	$1,000

filed a hearsay objection to Ibay's declaration and the exhibits supporting the OSC if he had never received them.

We reject Anyiam's argument that his hearsay objection is merely "boiler-plate" or is "so vague and ambiguous" that it does not establish his lack of candor. In fact, the strength of *all* the evidence noted above proves Anyiam testified falsely when he claimed he did not know about the November 13, 2010 payment due date. We affirm the hearing judge's lack of candor finding and assign it significant weight in aggravation. (See *In the Matter of Dahlz, supra*, 4 Cal. State Bar Ct. Rptr. 269, 282 [lack of candor may be stronger and more egregious aggravating factor than underlying misconduct].)

2. Aggravation for Lack of Insight (Std. 1.5(g))

Anyiam has displayed an attitude that demonstrates he lacks "a full understanding of the seriousness of his misconduct." (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68.) He made no effort to satisfy the sanctions order until after the disciplinary action had been initiated, and then maintained that his financial situation and purported ignorance of the payment deadline justified his failure to timely pay. On appeal, he continues to deny that his trial testimony lacked candor, even amidst substantial contrary evidence. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 647 [use of unsupported arguments to evade culpability revealed lack of appreciation for misconduct and obligations as attorney].) We affirm the hearing judge's finding that Anyiam's lack of insight is a "troubling aggravating factor."

3. No Aggravation for Multiple Acts (Std. 1.5(b))

The hearing judge assigned aggravation for "multiple acts of wrongdoing" under standard 1.5(b), based on two counts of misconduct. We find that these counts fail to qualify as multiple acts that would aggravate this case. Although the standards do not define "multiple acts," case

law establishes that the focus is on the nature of the underlying conduct, not on the number of charges alleged. We have held that "multiple acts of misconduct as aggravation are not limited to the counts pleaded. [Citation.]" (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279 [multiple acts for 65 improper client trust account withdrawals although charged as one count of moral turpitude for misappropriation].) We have also declined to find aggravation for multiple acts where several counts of culpability were based on the same act of wrongdoing, rather than discrete acts, and the culpability findings adequately reflected the severity of the misconduct. (See e.g., *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 839 [no multiple acts where two charges arose out of modification of single contingent fee agreement]; *In the Matter of Bach, supra,* 1 Cal. State Bar Ct. Rptr. at p. 646 ["two matters of misconduct may or may not be considered multiple acts"].)

The hearing judge relied on *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, to find multiple acts. In *Riordan*, an attorney was culpable of one count for failing to obey two court orders directing him to file an opening brief, and a second count for failing to perform legal services competently, based on the same conduct. The Supreme Court issued $1,000 in sanctions, which Riordan failed to report to the State Bar, resulting in a third culpability count. In *Riordan*, we afforded "little weight" in aggravation for culpability for three charges. (*Id.* at p. 48.) Here, unlike *Riordan*, Anyiam's culpability is for two counts of misconduct that flowed collectively from his disregard of a single court order. His misconduct did *not* involve multiple and distinct acts of wrongdoing, which would demonstrate that the misconduct is more severe than is reflected in the culpability determination. Considering the primary purposes of discipline,[10] we do not find aggravation for multiple acts in this case

[10] The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.)

because the seriousness of Anyiam's misconduct is adequately addressed by the multiple culpability findings.

4. No Aggravation for Significant Harm (Std. 1.5(f))

The hearing judge found aggravation for Anyiam's significant harm to Henry Quattlebaum and Ibay, "who were deprived of the use of $4,000 for a significant period of time and had to expend significant effort seeking to recover any of such funds." However, no specific evidence establishes that Anyiam's conduct caused Ibay or the superior court to perform such substantial additional work or incur additional expenses. (Cf. *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 792 [significant harm to administration of justice where opposing party performed substantial additional work and incurred additional expense resulting in monetary sanctions and undue burden on court system].) Further, the record does not show that Ibay or Quattlebaum suffered a notable financial burden due to Anyiam's failure to timely pay the court-ordered fees and sanctions. Accordingly, we do not find clear and convincing proof of significant harm.

B. Mitigation

1. Reduced Credit for Lack of Prior Disciplinary Record (Std. 1.6(a))

Anyiam practiced law in California for nine years prior to his misconduct. The hearing judge reduced the mitigation credit for no prior discipline record because Anyiam did not practice law full-time for the first two years. Anyiam argues the reduction is unwarranted because he could have been disciplined for conduct unrelated to the practice of law. We reject his argument. Whether an attorney is practicing law is relevant to the level of mitigation assigned for lack of prior misconduct during a particular period of time. (See *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170, 177 [mitigation properly discounted

where respondent stopped practicing law for five years and committed misconduct one year after returning to practice].) We affirm the hearing judge's reduced mitigation credit.

2. Credit for Pro Bono and Community Service

The hearing judge found, and OCTC agrees, that Anyiam is entitled to mitigation credit for his pro bono and community service, including frequently providing services at his local bar association. (See *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [pro bono and community service are mitigating].) We affirm the hearing judge's finding.

3. Some Credit for Cooperation (Std. 1.6(e))

Standard 1.6(e) provides for mitigation for "spontaneous candor and cooperation displayed to the victims of the misconduct or to the State Bar." The hearing judge found that Anyiam was entitled to "some mitigation" for entering into an extensive factual stipulation. Also, Anyiam does not dispute culpability on appeal. Nonetheless, we assign reduced mitigation for cooperation because Anyiam's trial testimony lacked candor. (See *In the Matter of Steele* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708, 723 [partial stipulation to facts warranted only some mitigation because of the attorney's lack of candor].)

4. Limited Credit for Good Character (Std. 1.6(f))

We agree with the hearing judge that Anyiam's good character evidence, based on the testimony of four attorney witnesses, does not merit full mitigating credit. While we give serious consideration to the testimony of attorneys (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [attorneys have "strong interest in maintaining the honest administration of justice"]), Anyiam's witnesses do not constitute a "wide range of references in the legal and general communities." (Std. 1.6(f); see *In the Matter of Riordan*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 50 [testimony of four character witnesses afforded diminished weight in mitigation]; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387

[testimony of three clients and three attorneys warranted limited mitigation because not broad range of references].)

III. 30-DAY ACTUAL SUSPENSION IS APPROPRIATE DISCIPLINE

Our analysis begins with the standards, which "promote the consistent and uniform application of disciplinary measures," and are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91 [Supreme Court will not reject recommendation arising from standards unless grave doubts as to propriety of recommended discipline].) While not strictly bound by the standards, we recommend sanctions falling within the range they provide unless the net effect of the aggravating and mitigating circumstances demonstrates that a greater or lesser sanction is needed to fulfill the primary purposes of discipline.[11] (Std. 1.7.) If we depart from the standards, we must articulate our reasons for doing so. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [stating clear reasons for departing from standards helpful to Supreme Court and member being disciplined].)

Standard 2.8(a) is most applicable because it directly addresses disobedience of a court order and contains the most severe discipline — disbarment or *actual* suspension.[12] We note that the 30-day actual suspension the hearing judge recommended is at the low end of the range of discipline in standard 2.8(a). (Std. 1.2(c)(1) ["Actual suspension is generally for a period of

[11] Standard 1.7(b) provides: "On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to confirm to ethical responsibilities." Standard 1.7(c) provides that "a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future."

[12] Standard 1.7(a) provides that when multiple sanctions apply, the most severe shall be imposed. Standard 2.8(b), which is applicable to a violation of section 6068, subdivision (o)(3) [failure to report judicial sanctions], calls for only a reproval.

thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, or three years"].)

OCTC urges us to affirm the 30-day suspension while Anyiam argues for a private reproval. Anyiam bases his argument on *In the Matter of Respondent Y*, *supra*, 3 Cal. State Bar Ct. Rptr. 862. In that case, which did not involve lack of candor, we recommended a private reproval as discipline for misconduct comparable to Anyiam's. However, *Respondent Y* was based on former standard 2.6, which is more lenient than current standard 2.8(a). Former standard 2.6 required "disbarment or suspension," while current standard 2.8(a) calls for, at a minimum, an *actual* suspension. Therefore, the analyses in *Respondent Y* and other cases decided under former standard 2.6, and imposing less than an actual suspension, are not helpful here in assessing the proper discipline for a violation of a court order under the new standard. Moreover, section 6103 itself calls for the minimum level of discipline to be a suspension (violations of court orders "constitute causes for disbarment or suspension"), and we take into account the Supreme Court's admonition that violations of court orders are serious misconduct. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112 ["Other than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbefitting an attorney"].)

Anyiam's suggested sanction of a private reproval is a downward departure from standard 2.8(a). In considering whether such a deviation is warranted, we look to Anyiam's serious misconduct, his mitigation (no prior discipline, pro bono work and community service, cooperation with the State Bar, and good character) and his aggravation (lack of candor and lack of insight). Noting particularly Anyiam's lack of candor,[13] we find that the net effect of the mitigating and aggravating factors does not justify a departure from standard 2.8(a), nor can we

[13] By testifying without full candor, Anyiam violated "the fundamental rule of ethics — that of common honesty — without which the profession is worse than valueless in the place it holds in the administration of justice." (*Tatlow v. State Bar* (1936) 5 Cal.2d 520, 524.)

articulate a legitimate reason in this case to deviate from its guidance. The hearing judge's recommendation is within the range provided in standard 2.8(a), and OCTC does not seek increased discipline. For these reasons, and because a 30-day actual suspension serves to protect the public, the courts, and the legal profession, we affirm the hearing judge's recommended discipline.

IV. RECOMMENDATION

For the foregoing reasons, we recommend that Christian Uchechukwu Anyiam be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for two years on the following conditions:

1. He must be suspended from the practice of law for the first 30 days of the period of his probation.

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

4. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.

5. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if Anyiam has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

V. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Anyiam be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VI. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL, P. J.

WE CONCUR:

EPSTEIN, J.

McELROY, J.*

*Hearing Judge of the State Bar Court, assigned by the Presiding Judge pursuant to rule 5.155(F) of the Rules of Procedure of the State Bar.